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HIGH COURT OF CHHATTISGARH AT BILASPUR
DIVISION BENCH

CORAM : **HON'BLE SHRI H.L. DATTU, CJ &**
HON'BLE SHRI V.K. SHRIVASTAVA, J.

Civil Revision No. 31 of 2006

Applicant	G.V. Rathore, son of Shri Vishram Rathore, aged about 70 years registered A-III Contractor, Kelkarapara, Raipur (CG).
	Versus
Non-applicants	1) State of Chhattisgarh, Through the Secretary, Water Resources Department, D.K.S. Bhawan, Mantralaya, Raipur (C.G.).
	2) The Executive Engineer, Lower Mahanadi Division, Raipur

Present : Shri BP Sharma, counsel for the petitioner.
Shri Vinay Harit, Dy Advocate General for the State.

ORAL ORDER
(Passed on 14th March, 2007)

The following oral order of the Court was passed by Vijay Kumar Shrivastava, J.

This is a revision under Section 19 of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 (*for short "the Adhiniyam, 1983"*) preferred by the applicant against the award dated 15-2-2006 passed by the Chhattisgarh Madhyastham Adhikaran, Raipur (*for short "the Adhikaran"*) in reference petition No.16/2005 whereby Rs.1,00,116/-, a part of the claim refusing remainder has been awarded in favour of the applicant.

2) Briefly stated facts are that the applicant was awarded work of remodeling of Mahanadi main canal from 50 KM to 56.38 KM

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group No.1 vide written agreement No.3/DL of 1982-83. The work contract was awarded under written agreement. As per the nomenclature of the work, the applicant had to do excavation in all types of soil alone, but most of the reaches were rocky strata and unless the rocks are excavated it was not possible for him to maintain the desired base of the progress of assigned work, therefore, he requested the authorities for removal of pitching stones so that the work may be taken up in proper sequence and also asked for layout. The applicant gave his willingness to do the extra work i.e. excavation in DR, SR & HR at the rate of 69% above the USR with separate payment and on assurance given by the non-applicant No.2 did excavation in rocky strata. Applicant's work was checked and measured, but the extra item of DR and SR was not valued at applicant's quoted rate of 69% above the USR. Applicant also did work of spoil cutting, but his work was not valued at a rate of 69.41% above the USR. As a result of those, applicant suffered short payment of Rs.8,09,309=20 and Rs.1,25,095=00 respectively. Towards check and dressing State reduced the payment to Rs.1,57,830=75. His total work was not measured and his contract was repudiated by the State Government thereby he sustained loss of Rs.61,120=00 and Rs.60,000=00 respectively.

3) The claim was not settled amicably; therefore, the dispute was referred to the then Chief Engineer, who was appointed as Sole Arbitrator in terms of the contract, who passed award. Dissatisfied with the award, the same was questioned by both the parties before the District Judge, Raipur. The District Judge, Raipur, set aside the award. Thereafter the Chief Engineer by his letter dated 25-7-1990

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directed the applicant to submit the reference petition before the Arbitration Tribunal and accordingly reference was moved.

4) Non-applicants contested the claim, *inter alia*, on the ground that as per agreement the applicant was required to do the work of excavation in all type of soil for canal earth work by making the canal section as per design different cross sections, either cutting or filling etc. The rate was Rs.6.19 per cum. No separate lead and lift was payable and no extra payment, claim was allowed for additional work, if developed during execution of the work. Since the work was an item rate work and not a percentage rate tender the demand of applicant for payment of 69% above USR in respect of the extra work was not acceptable, however, the rate of 12.94 per cum for excavation in all type of rocks of canal earth work with no separate demand of lead or lift etc. was settled by the Superintending Engineer and was accepted by the applicant.

5) The Adhikaran after due hearing held that the applicant was bound to accept the rates as settled by the Superintending Engineer which was accepted by him. Similarly he was bound to accept the measurement as recorded in connection with final bill. Since the applicant has completed the quantity to the extent as provided in the agreement, he was asked to stop the work that does not amount to repudiation of the contract. Therefore, having considered all the claims allowed a part of it by impugned award.

6) Learned counsel for the applicant contended that the applicant was permitted to carry out the work of excavation of rocks and his offer to charge rate of 69% above USR was accepted by the Executive Engineer, therefore, the Adhikaran by disallowing the said

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claim misconducted the proceeding. He relied on document Ex.P/7 and placed his reliance upon the decision of High Court of Allhabad rendered in the matter of **State of U.P. vs. Chandra Gupta & Co.** reported in **AIR 1977 ALL 28**. On the other hand, learned counsel for the State supported the award and opposed the contention raised by learned counsel for the applicant.

7) Section 19 of the Adhiniyam, 1983 reads as below :

> **"19. High Court's power of revision** - (1) The High Court may suo motu at any time or on an application made to it within three months of the award by an aggrieved party, call for the record of any case in which an award has been made under this Act by issuing a requisition to the Tribunal, and upon receipt of such requisition the Tribunal shall send or cause to be sent to that Court the concerned award and record thereof.
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> (2) If it appears to the High Court that the Tribunal --
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> (a) has exercised a jurisdiction not vested in it by law; or
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> (b) has failed to exercise a jurisdiction so vested; or
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> (c) has acted in exercise of its jurisdiction illegally, or with material irregularity; or
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> (d) has misconducted itself or the proceedings; or
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> (e) has made an award which is invalid or has been improperly procured by any party to the proceedings.
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> the High Court may make such order in the case as it thinks fit.
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> (3) The High Court shall in deciding any revision under this section exercise the same powers and follow the same procedure as far as may be, as it does in deciding a revision under section 115 of the Code of Civil Procedure, 1908 (No.5 of 1908)
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> (4) The High Court shall cause a copy of its order in revision to be certified to the Tribunal.
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> *Explanation :* For the purposes of this section, an award shall include an 'interim' award."

From bare reading of the above provision, it is evident that the scope of revision enshrined in the above provision is very

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limited. In case proceedings and award passed by the Adhikaran falls within the clauses (a) to (e) of sub-section (2) of Section 19 of the Adhiniyam, 1983, Court may make suitable orders, otherwise no option, but to reject the revision remains with the Court.

8) Sections 2 (1) (i) and 3 of the Adhiniyam, 1983 reads as below :

> **"2. Definitions.**—(1) In this Act, unless the context otherwise requires,--
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> (i) '*works-contract*' means an agreement in writing for the execution of any work relating to construction, repair or maintenance of any building or superstructure, dam, weir, canal, reservoir, tank, lake, road, well, bridge, culvert, factory, work-shop, powerhouse, transformers or such other works of the State Government or Public Undertaking as the State Government or Public Undertaking as the State Government may by notification, specify in this behalf at any of its stages, entered into by the State Government or by an official of the State Government or Public Undertaking or its official for and on behalf of such Public Undertaking and includes an agreement for the supply of goods or material and all other matters relating to the execution of any of the said works.
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> **3. Constitution of Tribunal.**- The State Government shall by notification constitute an Arbitration Tribunal for resolving all such disputes or differences pertaining to works contract or arising out of or connected with execution, discharges or satisfaction of any such works contract."

From conjoint reading of the aforesaid provisions, it is clear that the jurisdiction of the Adhikaran is to resolve all disputes pertaining to work contract arising out of a written agreement.

9) In the case of **State of U.P.** (supra), the High Court of Allahabad held thus :

> "The term 'extra' is generally used in relation to the works which are not expressly or impliedly included in the original contract and, therefore, not included in the original contracted price, provided the work is done within the frame work of the original contract, where the work done by the contractor for the Government was on account of the oral

> instructions given by the Engineer in Charge and the work done was within the frame work of the original contract, held that the work was liable to be treated as extra work and since the Government received its benefit, it is liable to pay the contractor for that work."

Although in a civil suit wherein claim for extra work has been made such a claim could be adjudicated as held above, yet we doubt such a claim could be adjudicated or allowed by an Adhikaran whose jurisdiction has been restricted under the law, even assuming that the Adhikaran has jurisdiction to enter into such dispute, the Adhikaran has considered the said dispute and resolved it.

10) The Adhikaran appreciated the dispute raised by the applicant in its award. Paras 14 and 15 of the said award read as below :

> "14. After completion of the work to the extent as provided in the agreement notice dated 24.12.1983 (Ex.P-10) was served by the respondents on the contractor, to finalize the agreement according to its terms and conditions, therefore it cannot be said that the respondents has withdrawn the work without completion. A letter of petitioner dated 20.01.1984 (Annexure A-8) addressed to S.D.O. Irrigation to which a copy of statement said to have been prepared at the time of preparation of supplementary schedule. Though it is not signed jointly, was made basis by the petitioner for preparation of the final bill. A letter of Executive Engineer dated 04.04.1983 (Ex.P-7) to Superintending Engineer makes it clear that during execution of work the contractor has reported that in cutting portion disintegrated rocks and soft rocks is appearing in some of the changes. The fact was also verified by the Executive Engineer during site inspection and the contractor was permitted to carry out the work in the above strata. Keeping in view the progress of work the contractor had offered his rate to execute the work in above strata at the rate of 69% above the U.S.R. The Superintending Engineer was requested to take necessary action in this regard. The petitioner G.V. Rathore in his affidavit has proved a letter (Ex.P-6) proposing rates for excavation of the extra item, however, it has to be noticed that the letter of Executive Engineer (Ex.P-7) relied upon by the petitioner, is simply a proposal to accept the rates proposed by the petitioner and it cannot be taken as approval by the higher authority.

> 15. The then Executive Engineer M.P. Sahapurkar in his affidavit has made it clear that the rates of excavation in all types of rocks was settled as per supplementary schedule at the rate of Rs.12.94 cum and was approved by the letter of Superintending Engineer dated 20.04.1984 which has also been signed by the contractor. The petitioner had carried no work in 54.74 km. and 55.13 km. therefore no measurements concerning to these places were recorded in the Measurement Book. The department has never consented for payment of Rs. 1,96,949.81 before the arbitrator. The Superintending Engineer K.C. Dubey was deputed to verify the measurements, which he did before the then Executive Engineer, and the contractor. According to this verification contractor had excavated earth to the extent of 1,40,498 cum and rock area 26,858 cum. This has been recorded in the Measurement Book concerning final bill at page 124 of Article H and accordingly it was settled that the petitioner shall be finally paid Rs.62,854.26. Since the final bill was not accepted by the petitioner it is still lying unpaid. In our opinion therefore, the petitioner is bound to accept the rates as settled by the Superintending Engineer which was also signed by him. Similarly, the petitioner is also bound to accept the measurement as recorded in connection of final bill because such measurements were carried out by K.C. Dubey, Superintending Engineer in presence of the petitioner."

11) Undisputedly there was no work contract in between the applicant and the State for extracting hard rock at the rate of 69% above USR and it is also evident that when applicant raised his claim the rate of excavation in all types of rocks as per supplementary schedule at the rate of Rs.12.94 per cum was settled and was under signature of the applicant accepted by him. Measurement was recorded in presence of the applicant and final bill was prepared. It was obligatory on the part of the applicant in the above circumstances to accept it, but he refused, therefore, the said amount was allowed by the Adhikaran and the claim of 69% above the USR was rejected by the Adhikaran. Award passed by the Adhikaran as a whole and in specific does not unveils that the

Adkhikaran exceeded its jurisdiction or misconducted the proceeding or acted otherwise which falls within any of the parameter envisaged under Section 19 of the Adhiniyam, 1983 for calling interference by revisional Court.

12) During the course of arguments, learned counsel for the applicant did not raise any other contention.

13) In the result, the revision is devoid of substance, therefore, it is dismissed. However, in view of the facts and circumstances of the case, parities are directed to bear their own costs.

Sd/-
Chief Justice

Sd/-
V.K. Shrivastava
Judge